

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| RICHARD JEWELL, et al, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | C.A. No. 97-408E |
| ALBERTO R. GONZALES, et al, |) | Judge McLaughlin |
| |) | Magistrate Judge Baxter |
| Defendants. |) | |
| |) | |

DEFENDANTS' STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

To the extent any facts are material to the resolution of this case, pursuant to Local Rule 56.1(B)(1), defendant hereby files the following statement of facts which are not in dispute.

1. The Zimmer Amendment prohibits the use of federal funds to provide prisoners with various amenities, including the viewing of R-,X-, or NC-17 rated movies. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-77, § 611, 115 Stat. 748 (Nov. 28, 2001).
2. In response to the Zimmer Amendment, BOP updated its Program Statement regarding recreation programs to incorporate the Zimmer Amendment's prohibitions. PS 5370.10 (Feb. 23, 2000). Declaration of John Vanyur, Ph.D. ("Vanyur Decl.") at ¶ 5.
3. The Federal Correctional Institution in McKean, Pennsylvania also updated its Institutional Supplement, IS 5370.08. The policy statement permits institutions to show R and NC-17 rated movies that have been edited for general public viewing. Declaration of Dennis Flatt ("Flatt Decl.") at ¶ 3.
4. BOP has identified a number of penological interests that could be served by restricting R-rated movies in prisons including, prison security and order, rehabilitation, deterrence,

punishment, a safe and non-hostile work environment for staff, and prison administration.

Declaration of John Vanyur, Ph.D. at ¶¶ 6-15; Flatt Declaration at ¶¶ 9-11.

5. FCI McKean is a medium security federal correctional institution which currently houses approximately 1600 individuals convicted of various federal offenses. Flatt Decl. at ¶ 4
6. The FCI McKean inmate population is comprised of a individuals convicted of a wide range of criminal offenses with over 200 inmates serving sentences in excess of 20 years, including 16 serving life sentences, for crimes such as murder, armed bank robbery, rape and drug possession and distribution. Over 100 inmates at FCI McKean have been classified as having a public safety factor of sex offender based on current or prior offenses. Approximately 200 inmates at FCI McKean have mental health issues for which they receive treatment. Id.
7. Inmates assigned to general population housing units at FCI McKean are not segregated into any particular housing unit based on their background (race, criminal history, nature of offense, etc) due to security concerns. Id. at ¶6.
8. The Movie Program at FCI McKean consists of the showing of movies over an internal television system to common areas in the four inmate housing units housing general population inmates at FCI McKean. Id. at ¶ 7. The institution does not exclude any particular class of inmates from watching any particular movie. Id. at ¶ 8.
9. As a result of the change in BOP policy required by the Zimmer Amendment, the movies currently selected consist of movies rated as G, PG, PG-13, and airline edited. Id. at ¶ 7.
10. In addition to the availability of movies through the FCI McKean movie program, inmates at FCI McKean have access to programming available on cable television, including non-premium channels such as the American Movie Classics. Furthermore, in

addition to movies and television programs, inmates have access to reading materials from the institution's leisure library and through incoming publications such as magazines and hard cover books. Id. at ¶ 12.

Dated: July 1, 2005

Respectfully submitted,

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